STATE OF MICHIGAN

COURT OF APPEALS

LUCY ANN LOUD,

Plaintiff-Appellant,

v

LEE TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED
January 30, 2007

No. 269256
Allegan Circuit Court
LC No. 05-038340-CZ

Before: Sawyer, P.J., and Neff and White, JJ.

PER CURIAM.

In this action brought under the Freedom of Information Act (FOIA), plaintiff appeals as of right the trial court's order granting defendant Lee Township summary disposition pursuant to MCR 2.116(C)(7). Plaintiff also challenges the trial court's orders denying her motion for an adjournment and granting defendant's motion to compel. We affirm.

On January 29, 2005, plaintiff presented Sally Ann Moore, defendant's supervisor and FOIA coordinator, with an FOIA request to inspect the records relating to the installation and occupancy of a manufactured home. Three days later, on February 2, 2005, Moore denied plaintiff's request because defendant was not the keeper of the requested records. On March 14, 2005, plaintiff presented defendant's board with a written appeal of Moore's denial. At a meeting that night, after much discussion took place regarding plaintiff's FOIA request, defendant's board chose to continue its discussion on plaintiff's request at a special meeting it scheduled for April 7, 2005. At this special meeting, plaintiff refused to discuss her FOIA request because more than ten days had passed since defendant's board was presented with her written appeal.

In September 2005, plaintiff filed a motion for trial hearing, in which she alleged that defendant denied her the right to copy and inspect the requested records. She requested punitive damages for defendant's arbitrary and capricious violation of the FOIA. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff failed to file the present action within the 180-day statute of limitations. Agreeing that plaintiff failed to comply with the statute of limitations, the trial court granted defendant's motion for summary disposition.

On appeal, plaintiff claims that the 180-day statute of limitations did not start to run until the eighth day after April 7, 2005. According to plaintiff, the minutes of the April 7, 2005,

special meeting were the only writing in which defendant's board of directors gave a final determination to her FOIA request. The minutes were mandated by statute, MCL 15.269(3), to be available to the public within eight days of the meeting.

We review a trial court's decision on a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is proper under MCR 2.116(C)(7) if the plaintiff's claim "is barred . . . because of statute of limitations." In reviewing a trial court's decision under MCR 2.116(C)(7), we consider all the documentary evidence presented by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it. *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004). In addition, we review questions of statutory interpretation de novo. *Ross v Auto Club Group*, 269 Mich App 356, 360; 711 NW2d 787 (2006).

Plaintiff submitted her FOIA request to defendant on January 29, 2005. Three days later, on February 2, 2005, Moore denied plaintiff's request in writing. After an FOIA request has been denied, the person requesting the public record has two options:

> (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
>
> (b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request. [MCL 15.240(1).]

Plaintiff chose the first option. On March 14, 2005, she submitted a written appeal to defendant's board. The head of a public body must respond to a written appeal within ten days of receiving the appeal. MCL 15.240(2). The head of a public body is not considered to have received a written appeal until its first regularly scheduled meeting after the appeal was submitted. MCL 15.240(3). Defendant's first regularly scheduled meeting after it received plaintiff's written appeal on March 14, 2005, was that night. Accordingly, defendant's board had ten days from March 14, 2005, to exercise one of the following four options:

> (a) Reverse the disclosure denial.
>
> (b) Issue a written notice to the requesting person upholding the disclosure denial.
>
> (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
>
> (d) Under unusual circumstances, issue a written notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. [MCL 14.240(2).]

At the March 14, 2005, meeting, defendant's board chose to continue its discussion regarding plaintiff's FOIA request at the April 7, 2005, special meeting. It did not reverse

Moore's denial in whole or in part, nor did it uphold Moore's denial in whole or in part and issue a written order. In addition, its decision to continue discussion on plaintiff's request at the April 7, 2005, special meeting cannot be considered "a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal." Such a notice must be issued under "unusual circumstances," MCL 15.240(2)(d), which are defined by the FOIA as follows:

> (*i*) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.
>
> (*ii*) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request. [MCL 15.232(g).]

Moore initially denied plaintiff's request because the requested records were not kept by defendant. However, there is no indication that defendant's board chose to further discuss plaintiff's request at the April 7, 2005, special meeting because it had to search for, collect, or examine the requested records. Accordingly, defendant's board failed to respond to plaintiff's written appeal on March 14, 2005, as mandated by MCL 15.240(2).

"If the head of a public body fails to respond to a written appeal . . . the requesting party may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection (1)(b)." MCL 14.240(3). Subsection (1)(b) provides that a person whose FOIA request has been denied may "[c]ommence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request." MCL 15.240(1). Accordingly, the issue is when did defendant make its "final determination to deny" plaintiff's request.

The goal of statutory interpretation is to give effect to the intent of the Legislature. *Diamond v Witherspoon*, 265 Mich App 673, 684; 696 NW2d 770 (2005). If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted. *Id.* We must apply clear and unambiguous statutory language as written. *Id.* The FOIA provides for two different decisionmakers in the process of a person making an FOIA request, having the request denied, and then appealing the denial. First, the "public body" decides whether to grant or to deny the request. MCL 15.235(2). Second, "the head of the public body" decides whether to uphold or to reverse "the public body's" denial of the request. MCL 15.240(1), (2). MCL 15.240(1)(b) references the "final determination" made by the "public body," not the decision on appeal made by the "head of a public body." Accordingly, any action commenced in the circuit court must be commenced within 180 days of the "final determination" made by the "public body." The public body's final determination is the "written notice denying a request for a public record in whole or in part." MCL 15.235(4).

Therefore, in the present case, defendant's final determination to deny plaintiff's FOIA request occurred on February 2, 2005, when Moore informed plaintiff in writing that she was denying plaintiff's request. Thus, when defendant's board failed to respond to plaintiff's written appeal within ten days as required by MCL 15.240(2), plaintiff had 180 days from February 2, 2005, to commence an action in the trial court. One hundred and eighty days from February 2,

2005, is August 1, 2005. Plaintiff did not commence the present action until the middle of September 2005, more than one month after the 180-day statute of limitations had expired. Because plaintiff failed to commence the present action within the statute of limitations, the trial court did not err in granting summary disposition pursuant to MCR 2.116(C)(7) to defendant.

We decline to address plaintiff's argument that the trial court erred in its determination that the present action was commenced on September 19, 2005, the date it waived plaintiff's filing fees, rather than on September 14, 2005, the date plaintiff presented her motion for trial hearing to the clerk of the trial court. The resolution of this issue does not affect the outcome of the present appeal. Even if the present action was commenced on September 14, 2005, it was still commenced after the 180-day statute of limitations had expired.

Defendant next claims that the trial court was biased against her and was consistently confused. Because defendant failed to move to disqualify the trial court, we review this issue for plain error affecting plaintiff's substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004). A judge is disqualified from hearing a case if he "is personally biased or prejudiced for or against a party." MCR 2.003(B)(1). This rule requires a showing of actual bias. *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). Any party challenging the bias of a judge must overcome a heavy presumption of judicial impartiality. *Id.* at 497. We have reviewed the portions of the transcripts in which plaintiff claims the trial court's bias and confusion can be seen. We failed, however, to find any evidence indicating the trial court harbored any actual bias toward plaintiff or that the trial court was and remained consistently confused. Plaintiff has failed to overcome the heavy presumption of judicial impartiality.

Defendant also claims that the trial court erred in denying her request for an adjournment to allow her more time to respond to defendant's motion for summary disposition. We review a trial court's decision on a motion for an adjournment for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). The "abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). When a trial court selects one of the principled outcomes, the trial court has not abused its discretion. *Id.*

A motion for an adjournment must be based on good cause, and a trial court may grant an adjournment to promote the cause of justice. *Soumis, supra* at 32. On March 10, 2006, six days before the scheduled hearing on defendant's motion for summary disposition, plaintiff requested a two-week adjournment because she was experiencing an exacerbation of medical symptoms and she needed time to visit her physician. However, under the circumstances of the present case, we conclude that the trial court's refusal to allow plaintiff more time to file a written response to defendant's motion for summary disposition or to extend the time for oral arguments was a principled outcome. *Babcock, supra*. Defendant's motion for summary disposition had been pending for five months before the trial court, plaintiff had already filed a response to defendant's motion, a trial court has the discretion to dispense with oral arguments, MCR 2.119(E)(3), and March 30, 2006, was a back up date for trial. The trial court did not abuse its discretion in denying plaintiff's request for an adjournment.

Plaintiff claims that the trial court also erred in granting defendant's motion to compel. We review a trial court's decision on a motion to compel for an abuse of discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993). On January 7, 2006, in response to one of plaintiff's interrogatories, Moore provided plaintiff with a notebook containing documents regarding plaintiff's correspondence with defendant. According to defendant, the documents in the notebook were the original documents. On January 13, 2006, Moore requested that plaintiff return the notebook the following day. Plaintiff refused, but stated that she would return the notebook no later than January 21, 2006. As of March 16, 2006, plaintiff still had not returned the notebook. Under these circumstances, the trial court's order compelling plaintiff to return the notebook to defendant was a principled outcome. *Babcock, supra*. The trial court did not abuse its discretion in granting defendant's motion to compel.

In her statement of questions presented, plaintiff claims that the lower court transcripts and case register contained substantive errors and that the trial court, contrary to MCL 15.240(5), failed to expedite the present case for trial. However, plaintiff failed to brief either of these issues. A party's failure to brief the merits of an issue constitutes abandonment of the issues. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Accordingly, defendant has abandoned these issues, and we decline to address them.

Finally, plaintiff asks us to determine if the trial court committed any other unidentified errors. We decline plaintiff's request. Because a party may not assert an error and then leave it to this Court to discover and rationalize the basis for its claim, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), it is axiomatic that a party may not request the Court to discover the error.

Affirmed.

/s/ David H. Sawyer

I concur in result only.

/s/ Janet T. Neff